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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-142

UNITED STATES OF AMERICA,

Petitioner,

—v.—

DONALD LAVERN CULBERT

ON WRIT OR CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**PETITION FOR CERTIORARI FILED JULY 26, 1977
CERTIORARI GRANTED OCTOBER 3, 1977**

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DOCKET ENTRIES

6/5/75 ORD: indictment filed. N.P. Houser to app 6/20/75 and Culbert to app. 6/9/75 before Mag. Woodruff. Filed Indictment

7/11/75 ORD: defts pres, ea pl NOT GUILTY to all cts, pltf's mo for exemplars granted., contd to 9-8-75, 11AM for jr tr.

3/8/75 Stipulation re Bank of Marin.

3/15/75 Verdict of guilty to counts 1 and 2 as to deft CULBERT.

3/17/75 Deft CULBERT's notice and motion for new trial, arrest of judgment and acquittal, 4-9-76/11am.

4/9/75 MINUTE ORDER: Deft CULBERT sentenced to custody of A/G for 4 yrs, exec of sent. stayed until response on appeal; deft to remain on same bail. Motion for new trial—DENIED.

4/15/75 Entered JUDGMENT as to deft CULBERT (filed 4-14-76).

4/15/75 Deft CULBERT's notice of appeal. Mailed notices to parties of record.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE: HONORABLE LLOYD H. BURKE, JUDGE

No. CR-75-421 LHB

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

DAVID LAVERNE CULBERT, DEFENDANT.

* * * *

[2] APPEARANCES:

For the Plaintiff:

JAMES L. BROWNING, JR.,
United States Attorney

BY: JOHN LOCKIE,
Assistant United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102

For the Defendant:

JAMES F. HEWITT,
Federal Public Defender

BY: FRANK O. BELL, JR.,
Assistant Federal Public Defender
450 Golden Gate Avenue
San Francisco, California 94102

* * * *

[24] [DIRECT EXAMINATION OF
WILLIAM PAUL MURRAY]

BY MR. LOCKIE:

Q. How long have you been in banking, Mr. Murray?
A. Oh, about 25 years.

Q. I see, and which bank are you involved with at the present time?

A. At the present time it is the Bank of Marin.

[25] Q. How long have you been with them?

A. Since 1962.

Q. In what capacity?

A. President.

* * * *

Q. Do you have customers who deal with the Bank of Marin who are not residents of California?

A. Oh, yes, for deposit accounts.

[26] MR. BELL: I would object to this testimony on the grounds of relevancy, and I would like to approach the bench if there is any question on the relevancy.

THE COURT: I assume this is directed to the question of whether the bank is involved in interstate commerce?

MR. BELL: We will stipulate it is insured by the FDIC, and there is a question of relevance as set out in the indictment. I would like to be heard on that point.

THE COURT: He may answer. Do you have out-of-state customers?

THE WITNESS: Right, deposit accounts, loans, Master Charge, stockholders.

MR. LOCKIE: Q. Do you conduct business outside the State of California?

A. Yes, in that these people are located outside the state, and we loan with them, or they have accounts with us, or they are holders of Master Charge cards, or stockholders.

Q. Would you speak up so everyone in the jury box can hear you?

A. We do have clients out of the State of California through loans, through deposit accounts, stockholders, holders of our Master Charge cards traveling throughout the United States and world, as a matter of fact.

Q. Have you purchased bonds from other states?

A. Yes, we as a bank, you know, hold municipal bonds. [27] We have bonds from various states and cities throughout the United States.

MR. BELL: Your Honor, I hate to interrupt, but I do feel it is necessary. I would like to make the same objection to this testimony on the same ground of relevancy.

THE COURT: Sure. It is on the record.

MR. LOCKIE: Q. How many state bonds do you hold, approximately?

A. State of California or just municipal bonds in general?

Q. Other states' municipal bonds issued in other states.

A. In other states, I would be estimating three or four million dollars, probably.

* * *

[286] THE COURT: In the absence of the jury, Mr. Bell.

MR. BELL: Your Honor, at this time, at the close of the Government's case, I would like to make a motion for judgment of acquittal in this matter. Part of it is set out, or most of it is set out in the formal motion which I have filed just now with the court, and I have provided a copy to Mr. Lockie. I realize, in a sense, it is unfair because he has not had a chance to read or respond to it.

* * *

[300] THE COURT: Well, I think we can cut this short. The jury is waiting. This is a well-prepared memorandum, Mr. Bell, and I think there is more than superficial logic in the arguments made. However, I think that the facts of the case are such to bring the charge within the contemplated scope of the bank robbery statute.

I am of the opinion that as far as the Second Count is concerned, probably the use of the Hobbs Act is an extension not really contemplated by Congress at the time the legislation was enacted, but the language is probably broad enough to allow its utilization in this case.

So the motion for judgment on acquittal on each of the two counts is denied.

* * *

[322] [MR. BELL]: * * * No. 18 I do have an objection to. I didn't offer any alternative. I object to that instruction.

"Interstate commerce may be 'adversely affected,' within the meaning of these instructions, by an increase of the cost of doing business in interstate commerce, or by the reduction of the profits from interstate business. It is not necessary to show an actual interruption or delay."

I just submit that is too broad an interpretation of interstate commerce.

THE COURT: Let the jury figure out what "adversely affected" is.

[323] MR. BELL: So this one is not given?

THE COURT: No, I won't give it.

MR. LOCKIE: May I suggest an alternative instruction, Your Honor. I suggest that we instruct the jury that extortion or threats of violence need affect interstate commerce only in a minimum degree to constitute a violation of Title 18, United States Code 1951.

THE COURT: I will let them figure that out.

* * *

[INSTRUCTIONS TO THE JURY]

[408] * * * It is stipulated and agreed that the Bank of Marin, San Rafael, California, is a banking institution organized and operating under the laws of the United States, and a bank, the deposits of which are insured by the Federal Deposit Insurance Corporation at the time of the offenses alleged in the indictment.

* * *

[414] 18 U.S. Code Section 1951, Subdivision B, Paragraph 2 defines extortion as follows: "As used in this section, the term extortion means the obtaining of property from another with his consent induced by wrongful use of actual or threatened force, violence or fear, or under color of official right." The term fear does not necessarily refer to physical fear or fear of violence. It

includes fear of economic loss. It is not necessary for the Government to show that the defendant intended to specifically obstruct, delay or affect interstate commerce. All that is necessary as to this issue is that the Government's evidence prove that the defendant intended to commit an act proscribed by the statute, the natural consequences of which would be to obstruct, delay or affect commerce.

* * *

No. 77-142

UNITED STATES, PETITIONER,

v.

DONALD LAVERN CULBERT

ORDER ALLOWING CERTIORARI

Filed October 3, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

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